FILED
OCT 19 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-52

IN THE

Supreme Court of the United States

MICHAEL SKAKEL,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

On Petition for a Writ Of Certiorari to the Supreme Court of Connecticut

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

The ruling below can be sustained only if a state supreme court has the power to apply retroactively new interpretations of criminal statutes—no matter how radical, unexpected and indefensible the change from prior decisions—to revive time-barred prosecutions, convert misdemeanors to felonies or increase minimum or maximum penalties. In fact, the State concedes *only one* limit would survive; judges could not broaden the range of conduct made unlawful. This Court has never embraced such a dramatic limitation on the scope of the Due Process Clause. To the contrary, the decisions in *Bouie*, *Rogers*, *Marks* and *Stogner* all lead to the inescapable conclusion that the Due Process Clause is violated when a state court revives a time-barred prosecution.

Perhaps recognizing the difficulties with its position on the merits, the State argues that the federal question was not timely raised in state court. To the contrary, petitioner raised the due process claim immediately after it first arose. The violation occurred in the opinion affirming petitioner's conviction; that is, when the Connecticut Supreme Court overruled its prior unanimous decisions, radically changed its interpretation of the reach of the 1976 law, and then applied that new interpretation to him. Under this Court's cases, petitioner properly preserved his claim in these circumstances.

The State also posits that petitioner's conviction might have been upheld on the alternate ground that there *never* was any statute of limitations for petitioner's offense. The desperate implausibility of this counter-textual assertion—which would require the conclusion that "capital felony" means felonies *not* punishable by death—perhaps best explains why a majority of the Supreme Court of Connecticut elected to overrule two of its unanimous decisions rather than to embrace it. This Court's practice of occasionally postponing the resolution of federal questions has no place where the state court, *in the very case giving rise to the petition*, was squarely presented with the alternate state law basis for affirming, but instead *went out of its way* to create the federal

question. It would be a peculiar rule, to put it mildly, that permits a state court to insulate a due process challenge to *its* actions by expressly reserving for another day a state law question that might have averted the violation. When this Court decides the federal question in petitioner's favor, the state court will have ample opportunity to address the state-law argument, and—if that argument is found to have any merit—whether, as a matter of federal law, the Due Process Clause prevents the State from applying *that* new interpretation of the law to petitioner. There is no reason to abstain from reaching the significant question raised by the petition.

I. PETITIONER'S FEDERAL QUESTION WAS TIMELY RAISED ON REHEARING BECAUSE HE HAD NO DUE PROCESS CLAIM UNTIL, IN AFFIRMING HIS CONVICTION, THE STATE SUPREME COURT OVERRULED TWO CASES AND APPLIED THE NEW RULE TO HIM

Until the opinion affirming petitioner's conviction, the law of Connecticut—firmly established in two unanimous decisions by the final arbiter of such law—was that its 1976 statute rescinding the limitations period for non-capital murder did not apply to conduct pre-dating the statute. The State argues review should be denied because petitioner never raised his due process claim in the trial court, waiting until after the Connecticut Supreme Court changed the law by overruling those two decisions. Petitioner's duty, however, was merely to preserve the claim he now makes, not to demonstrate clairvoyance. Because the federal question arose when the state supreme court rendered its decision in *this* case, that issue was timely raised in a motion for rehearing.

There is no authority for the State's novel proposition that a petitioner must anticipate and preemptively address any federal claims that might arise if a state supreme court unexpectedly abandons binding precedent. The Court's cases are squarely to the contrary. "[W]hen the act complained of is the act of the [state] Supreme Court, done unexpectedly at

the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for the infraction of constitutional rights if the party aggrieved in such a way could not come here." *Saunders v. Shaw*, 244 U.S. 317, 320 (1917) (defendant not "bound to ask a ruling or to take other precautions in advance"); *see also Brinkerhoff-Faris Trust & Savs. Co. v. Hill*, 281 U.S. 673, 677 (1930) (federal claim timely raised on rehearing; "[n]o one doubted the authority of the *Laclede* case until it was expressly overruled in the case at bar").

The State asserts petitioner nonetheless "had an opportunity to anticipate and assert the federal question in his reply brief" because he "was on notice" from the State's brief and decisions by the Connecticut Supreme Court that *Paradise* "was under siege and ripe for reconsideration." Opp. at 12. There are three independent flaws in this argument.

First, the federal question does not arise solely from the court's decision to overrule prior cases. There would have been no due process violation if the court had announced a new default rule of statutory interpretation and applied it *prospectively* only. The court went one step further, however, and applied the new rule *retroactively*. The State has identified no precedent that would have led petitioner to anticipate that second step, which is the basis for the due process claim.

Second, although a party must anticipate that an *open* issue of state law may be decided against him, there is no such requirement where the state court has already ruled on the issue. The Court drew this very distinction in *Brinkerhoff-Faris*, *supra*. "Had there been no previous construction of the statute by the highest court, the plaintiff would, of course, have had to assume the risk that the ultimate interpretation by the highest court might differ from its own." 281 U.S. at 682 n.9; *see also Herndon v. Georgia*, 295 U.S. 441, 444-45 (1935) (expressing "no doubt that the federal claim was timely if the ruling of the state court could not have been anticipated," but "several months prior to the action of the trial court" the state court had decided a case in which it "in sub-

stance construed the statute as it did in the present case"); *id.* at 446 (appellant was obligated "to anticipate the probability of a similar ruling in his own case"). It is particularly inappropriate to fault petitioner for not anticipating the upheaval of settled law where it involved statutory interpretation. *See Herald Publ'g Co. v. Bill*, 111 A.2d 4, 8-9 (Conn. 1955) (holding it "especially true when the precedent involved concerns the interpretation or construction of a statute" that *stare decisis* counsels against overruling an earlier decision "unless the most cogent reasons and inescapable logic require it").

Finally, this case could not possibly fall within a proposed rule requiring parties to anticipate the overruling of particularly unstable precedent. The cases cited by the State in no way signaled that the court was moving in the direction of overruling *Paradise* and *Crowell*. In fact, to the extent the court addressed those two unanimous decisions in the later cases cited by the State, *see* Opp. at 11-12, it embraced their holdings and the underlying legal analysis. *See State v. Parra*, 741 A.2d 902, 906-07 (Conn. 1999) (retroactively applying shorter time limit for motions to vacate judgments; "[w]e agree with the defendant that *Paradise* created a *bright line rule* on 'matters involving the statutory construction of criminal statutes'"—a rule that is confined to "certain types of criminal statutes, such as a statute of limitations for the prosecution of a crime[.]" (emphasis added)); *see also In re Daniel H.*, 678 A.2d 462, 468 (Conn. 1996) (rejecting retroactive application of statute eliminating immediate appeals of transfers to adult court; "In fact, we recently have rejected an argument analogous to the argument made by the state in the present case. See *State v. Crowell*[.]") The other cases cited by the State are even less helpful; they *pre-date Crowell*, the case in which the State had *already* sought to overrule *Paradise*. *See* Opp. at 12 (citing cases decided in 1985 and 1986).[1]

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[1] The State argued for overruling *Paradise* and *Crowell*, in passing, in three paragraphs tacked to the end of its limitations argument. By then, it had defaulted on this alternate ground: under state law the "appellee shall file a preliminary statement of issues" within twenty days of appellant's

Parties in the various state courts are not, and should not be, required to populate their trial and appellate pleadings with federal questions that might conceivably arise in the event a part of the universe of binding state court precedent applicable to the case at hand is overturned. Petitioner's due process challenge is properly before this Court.

II. ABSTENTION ON STATE LAW GROUNDS IS INAPPROPRIATE BECAUSE THE STATE COURT HAD AMPLE OPPORTUNITY TO AVOID THE FEDERAL QUESTION

The State argues that "it remains an open and debatable question under Connecticut law" whether there was a limitations period for non-capital murder in 1975. Opp. at 16. Abstention might be appropriate in cases where the state court was deprived of the opportunity to render a federal question moot by clarifying state law. It is *not* appropriate where the state court went to the greatest lengths imaginable—overruling two unanimous decisions and retroactively applying the new interpretation of a statute to the petitioner—to *avoid* resolving a question of state law.

In 1975, Connecticut law provided that "[m]urder is punishable as a class A felony unless it is a capital felony and the death penalty is imposed as provided in section 53a-46a." Conn. Gen. Stat. § 53a-54a. The State has never suggested that Moxley's murder was a capital felony; the opinion below conclusively stated otherwise. Pet. App. 33a n.32. Class A felonies were subject to a five-year limitations period. Conn. Gen. Stat. § 54-193 (Rev. to 1975).[2] The State argues that

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statement if it wishes to "present for review alternate grounds upon which the judgment may be affirmed." Conn. Practice Book Rule 63-4(a)(1); Pet. App. 298a (petitioner's preliminary statement of issues; see attached). The State filed *no* statement of issues, let alone one identifying the alternate basis for ruling that the prosecution was not time-barred.

[2] Because the statute mentioned no period for offenses punishable by death, the state supreme court has held that "capital prosecutions" may be

because the opinion below purported to reserve the question whether five years for offenses punishable by imprisonment really meant five years, this Court should abstain from deciding if that court violated his due process rights.

The State relies on dicta in *Harman v. Forssenius*, 380 U.S. 528 (1965), suggesting that "abstention may be proper" where "resolution of the federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law[.]" *Id.* at 534. The Court upheld the federal district court's decision not to *postpone* its exercise of jurisdiction until the state court had been "afforded a reasonable opportunity to pass on underlying issues of state law and to construe the statutes involved." *Id.* This Court need not decide whether *Harman*'s rationale—that the state statutes were unambiguous—applies here too, *see id.* at 535; the state court was "afforded a reasonable opportunity" to decide this case on the "alternate" ground.

Apart from the untimely and abbreviated discussion at the end of the State's argument in its brief to the state supreme court, the attention of the parties was *fully* devoted to the very state law issue now cited by the State. The supreme court hardly viewed this as a question that it should answer to avoid deciding whether the 1976 statute could be applied to petitioner. The majority was so skeptical of its ability to resolve the case on this ground that it took the extraordinary step of overruling two prior unanimous decisions—the settled state law for more than twenty years—to avoid it.

This Court need not try to predict how the Connecticut court would resolve the issue identified by the State. If this

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prosecuted at any time. *See State v. Ellis*, 497 A.2d 974, 987 (Conn. 1985) (allowing *Paradise* defendants to be charged with capital murder after non-capital murder charges were time-barred). The *Ellis* court stressed the distinction between "murder" and "capital felony." *Id.* at 993 ("Murder and capital felony do not contain the same statutory elements, . . . they do not carry the same punishment, and under the law of this case, they are not subject to the same limitation period on prosecution.")

Court reverses petitioner's conviction, there will be time enough for the Connecticut court to consider whether, as a matter of state law, the statutes in effect in 1975 contained a five-year limitations period for non-capital murder. And, if the answer to that question is no, the court will also be able to decide, with appropriate guidance from this Court, whether the Due Process Clause permits such an interpretation to be applied here in light of the clear statement in *Paradise* that the law in effect before 1976 "provided for a five-year period of limitations on all felony offenses." 456 A.2d at 307.

III. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS AND OTHER COURTS ON AN ISSUE OF GREAT IMPORTANCE

The State's defense of the court's ruling confirms its significant breadth and only further emphasizes the need for this Court's review. The State does not dispute that had the court been addressing elements of a criminal offense, its action here—overruling two of its own unanimous decisions, each of which had conclusively interpreted the statute in a materially different way, and then applying the new interpretation retroactively—would violate due process. The *sole* way to uphold the lower court's ruling is to engraft an "only the elements of the offense" limitation on the due process protections applied in *Bouie* and subsequent cases decided by this and other courts. But those cases cannot and should not be read so narrowly. This Court's review is needed to correct Connecticut's misguided approach.

The State correctly observes that constraints imposed on the judiciary under the Due Process Clause are more narrow than ex post facto restraints imposed on the legislature. *See Rogers*, 532 U.S. at 459-60 (noting "important institutional and contextual differences" between legislation and judicial decisions). But those constraints on retroactive criminal law changes are narrower only insofar as needed to allow "evolution" of the common law. *Id.* at 461. That need is fully addressed by holdings that judicial interpretations comply with due process so long as they are not "unexpected and indefen-

sible" by reference to the law which had been expressed at the earlier time in question. *Id.* (holding that "this limitation adequately serves the common law context as well"). Thus, while the judicial branch is afforded the latitude to make changes that promote measured evolution of the common law, the two clauses apply with equal breadth where, as here, the change is unexpected and indefensible.

None of the cited cases intimates—much less holds—that an accused's due process rights, including fair notice, extend "solely" to "the criminality of his contemplated conduct." Opp. at 20. The State simply assumes such a limitation because the Court's earlier cases presented the issue in that particular context. But careful review of the leading cases confirms that the Due Process Clause protects against changes in the law such as those reviving time-barred prosecutions. *Bouie* itself made clear that the Fourteenth Amendment's protections against unexpected changes in the criminal law extend beyond the definition of the offense. 378 U.S. at 354 ("[w]hen a state court overrules a consistent line of procedural decisions with the retroactive effect of denying a litigant a hearing in a pending case, it thereby deprives him of due process of law"). In *Rogers*, the Court proclaimed that "the more basic and general principle of fair warning" is the touchstone of *Bouie*. 532 U.S. at 459. When a State revives a time-barred prosecution, it cuts to the very core of this fair warning protection. *See Stogner*, 539 U.S. at 611 (a State acts "unfair[ly] and dishonest[ly]" when it prosecutes after it has "assured a man that he has become safe from its pursuit"; this "depriv[es] the defendant of the 'fair warning,' that might have led him to preserve exculpatory evidence" (internal quotation marks and citations omitted)).[3]

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[3] Cases from two federal circuits also explicitly recognize that due process protections are not confined to the scope of criminal conduct under the statute defining the crime. *See, e.g.*, *Helton v. Fauver*, 930 F.2d 1040, 1044-47 (3d Cir. 1991) (Due Process Clause prevents state court from reading "and" to mean "or" in statute setting forth findings needed to transfer a case from juvenile to adult court); *Rubino v. Lynaugh*, 845

The State's cramped view of the law would lead to absurd results. A state court could revive a time-barred prosecution by interpreting "five years" in a statute to mean "no limitation," or by augmenting the limitations statute with the type of exception forbidden in *Stogner*. *See* 539 U.S. at 609 (State may not revive a prosecution by relying on a new law allowing cases to be brought within a year of the victim's first complaint to the police). It would also permit unexpected increases in punishment contrary to this Court's holdings. The right to "fair notice" pervades due process cases in other areas. *See, e.g., Simpson v. United States*, 435 U.S. 6, 14-15 (1978) (rule of lenity applies where doubt exists as to severity of authorized punishment). Due process guarantees, not only of fair notice but of non-retroactivity generally, would become an empty formality if *Bouie* and related cases were read as the State urges.

Finally, the State argues that "[e]ven if one assumes . . . a person is entitled to notice" of the limitations period for an offense, Opp. at 22, because the opinion on which "petitioner stakes his claim" came eight years after the offense, his "reliance" on it is "misplaced." Opp. at 22 & 23. Not so. A new limitations period may be added to an offense *not yet* time-barred, *see* Opp. at 17-19, because a defendant's right to fair warning is violated by conduct occurring *after* the initial limitations period has expired. *See Stogner*, 539 U.S. at 611 (identifying the evils that occur when the State expands the limitations period "after" it has expired). In 1983, after the five-year limitations period had run, the State (through its highest court) assured petitioner that he was free from pursuit and need not preserve exculpatory evidence. That assurance

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F.2d 1266, 1272-73 (5th Cir. 1988) (retroactive repeal of judicial doctrine that barred multiple prosecutions of offenses "carved" from the same transaction would violate Due Process Clause because that clause ensures fair warning and also safeguards against vindictiveness and increased punishment). To the extent state courts hold otherwise, *see* Opp. at 21 n.3, it merely deepens the split in authorities warranting review.

was amplified in 1994, when the court unanimously reaffirmed *Paradise*. By haling petitioner into court seventeen years after *Paradise*, the State discarded the rules that *it* had written, deprived him of the fair warning to which he was entitled, and exposed him to a retroactive change in the law.[4] The decision below is in serious conflict with decisions of this and other courts on a question of great importance.

CONCLUSION

This Court should therefore grant the petition for a writ of certiorari.

Respectfully submitted.

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October 19, 2006

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[4] Because prejudice indisputably need not be shown, this is not the place to fully refute assertions about petitioner's incriminating admissions. Two things bear noting, however. First, many of those alleged statements were made or relayed to the authorities *after* the limitations period had run. Second, the State's disparagement of petitioner's alibi merely highlights the prejudice caused by the State's delay in charging him. *See* Pet. Br. at 5-6; *see also* Pet. App. at 219a (Andrea Shakespeare, the witness refuting petitioner's alibi, admits she read Mark Fuhrman's book about the murder and told the police she believed petitioner was not at his cousin's house at about the time the murder occurred, "because those are the tales that had been told"); Pet. App. at 4a n.6 (opinion notes Shakespeare's memory problems). This prejudice is particularly acute because no physical evidence connected petitioner to the crime.

APPENDIX I

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201 CAPITOL AVENUE
HARTFORD, CT 06106

(SUPERIOR COURT NO. FST CR00-135-792-T)

STATE OF CONNECTICUT	:	APPELLATE COURT
	:	
v.	:	J.D. OF STAMFORD/NORWALK
MICHAEL SKAKEL	:	SEPTEMBER 17, 2002

DEFENDANT'S PRELIMINARY STATEMENT OF THE ISSUES

Pursuant to Section 63-4(a)(1) of the Connecticut Practice Book, the Defendant-Appellant, **MICHAEL SKAKEL**, through his undersigned counsel, wishes the following issues to be reviewed on appeal:

1. Whether the trial court erred in denying the Defendant's Motion To Dismiss since the prosecution was time barred pursuant to the Statute of Limitations that was in effect for murder in 1975?

2. Whether the juvenile court erred in transferring the Defendant's case to the adult criminal division of the Superior Court since the statutory criteria for transfer

pursuant to Conn. Gen. Stat. Section 17-60a (Rev. to 1975) were not established?

3. Whether the trial court erred in refusing to hold an evidentiary hearing and/or to order a new trial in that the defendant's constitutional and statutory rights were violated by a pattern of conduct in which the prosecution failed to disclose either in a timely fashion or not at all exculpatory information and material to the investigatory grand jury (*see* Conn. Gen. Stat. Section 54-47f(f)) and/or to the defendant, including, but not limited to, (a) the failure to disclose a composite sketch of a person seen walking near the murder scene around 9:30 p.m. or 10:00 p.m. by a security guard; (b) the Summary Profile Reports of Kenneth Littleton and Thomas Skakel prepared by the police; (c) the mid-trial disclosure of the 1976 application for an arrest warrant for Thomas Skakel; and, (d) the post-jury selection disclosure of 1992 videotaped police interviews of Kenneth Littleton?

4. Whether the trial court erred in refusing to grant a new trial since the defendant's constitutional rights were violated by the prosecutor's closing and rebuttal arguments by the improper use of "passion, prejudice or resentment" and by engaging in a pattern of deliberately misrepresenting the facts, arguing facts not in evidence, and presenting argument that was factually inaccurate?

5. Whether the trial court erred in not *sua sponte* instructing the jury on manslaughter in the first degree pursuant to Conn. Gen. Stat. Section 53a-55(a)(2), a lesser included offense of murder, following the State's closing argument in which it argued factors that would have justified a verdict for manslaughter?

6. Whether the trial court erred in not ordering a new trial since the State engaged in prosecutorial misconduct by presenting a photograph of the defendant taken in 1979 when he was almost nineteen years old

and representing that the photograph depicted the defendant in the mid-70s when he would have been fifteen years old?

7. Whether the trial court erred in admitting irrelevant and prejudicial testimony from Matthew Tucciarone and Lawrence Zicarelli, concerning alleged statements made by the defendant, which statements, during their respective proffers to the Court, were never sufficiently connected to the crime charged?

8. Whether the trial court erred in admitting damaging and prejudicial statements attributed to the Defendant by way of triple hearsay testimony through the State's witness, Mildred Ix?

9. Whether the trial court erred in its instructions to the jury by inviting the jury to disregard the testimony of the alibi defense witnesses who are family members, thereby infringing upon the Defendant's constitutional rights to present a defense and to a fair trial?

10. Whether the trial court erred in refusing to hold an evidentiary hearing and/or to order a new trial in that the State used materials protected by the attorney-client privilege and attorney work product doctrine in its investigation and prosecution of the defendant, thereby violating the defendant's rights under the due process clauses of the federal and state constitutions?

11. Whether the trial court erred in not granting the Defendant's Motion In Arrest Of Judgment since the State's failure to proceed by way of grand jury indictment violated defendant's rights under Article One, Section 8 of the Connecticut Constitution, as it existed at the time of the offense charged: the due process clauses of the federal and state constitutions; the ex post facto clauses of the federal and state constitutions; and the equal protection provisions of the state and federal constitutions?

12. Whether the trial court erred in excluding evidence relating to Kim Freehill's residency at The Elan School, which was within the scope of the State's case, as such testimony directly concerned the circumstances under which the defendant made certain statements to fellow residents at Elan thereby the defendant's state and federal constitutional rights to confrontation, to present a defense, to due process of law and to a fair trial?

13. Whether the trial court erred in admitting the prior testimony of a deceased witness since that testimony constituted inadmissible hearsay, and deprived the Defendant of his federal and state constitutional rights of confrontation, due process and a fair trial?

14. Whether the trial court erred when it *sua sponte* interrupted the defense closing argument and advised the jury to disregard portions of defense counsel's closing argument?

15. Whether the trial court erred in granting the State's request for a curative instruction, informing the jury that it had granted the request and then in instructing the jury to disregard portions of defense counsel's arguments?

16. Whether the trial court erred in its instruction in one or more of the following ways, thereby depriving the defendant of his state and federal constitutional rights to due process and a fair trial by an impartial jury: (a) by unfairly marshaling the evidence and highlighting the state's case and diminishing the defense; (b) in its instructions to the jury on consciousness of guilt, which instructions included the proposition that "the defendant's statements as to his activities and whereabouts on the night in question, if you find them to be false or materially inconsistent, might be offered because such statements tend to show a consciousness of guilt"; (c) in its instructions on motive by informing the jury that "a total lack of evidence of motive

does not necessarily raise a reasonable doubt as long as there is other evidence produced that is sufficient to prove guilt beyond a reasonable doubt"; (d) in its instructions and re-instructions to the jury on the concept of reasonable doubt; and, (e) in suggesting to the jury that in its deliberations, the jury would be determining the guilt or the innocence of the defendant as opposed to determining whether the State has proven each and every element of the crime charged beyond a reasonable doubt?

17. Whether the trial court erred in denying the defendant's motion to excuse a juror on the grounds of flagrant juror misconduct?

18. Whether the trial court erred in not holding an evidentiary hearing and/or in not granting a new trial based on the post-trial comments of one or more jurors, which suggest that the jury had difficulty following all of the Court's instructions?

19. Whether the trial court erred in admitting eighteen police and autopsy photographs of the victim which were cumulative and used to shock the jury's conscience, thereby infringing upon the defendant's state and federal constitutional rights to due process and a fair trial?

20. Whether the trial court erred in admitting irrelevant and highly prejudicial hearsay evidence from the diary of the victim?

21. Whether the trial court erred in admitting the tape-recorded conversation between the Defendant and Richard Hoffman, which contained inadmissible hearsay as well as irrelevant and prejudicial evidence of the defendant's prior misconduct?

22. Whether the trial court erred in denying the defendant's motions for judgment of acquittal?

23. Whether the trial court erred in denying the Defendant's Motion In Arrest Of Judgment?

24. Whether the trial court improperly imposed a sentence based upon improper considerations, including the Defendant's state and federal constitutional right to remain silent?

25. Whether the 1975 indeterminate sentencing scheme violates the separation of powers provisions of the Connecticut Constitution by giving the Board of Parole the unfettered discretion of determining the Defendant's period of incarceration?

26. Whether the trial court's imposition of an indeterminate sentence of twenty years to life – which means a life sentence – for the actions of a minor constitutes cruel and unusual punishment under the state and federal constitutions?

27. The Defendant hereby reserves the right to raise any further issues which may become evident upon a review of the trial transcript The undersigned counsel did not represent the Defendant at the trial proceedings and has not yet received the complete transcript.

THE DEFENDANT,
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CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing Preliminary Statement Of The Issues has been mailed postage prepaid this 17th day of September, 2002 to the following counsel of record:

Susann Gill, Esq.
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Bridgeport, CT 06604

/s/
HOPE C. SEELEY